

accumulation phase and the "pay-out" annuity phase. The Company relies upon Rule 26a-1 to assess the Administration Charge, and will monitor the proceeds of the Administration Charge to ensure that they do not exceed expenses without profit.

6. There are no sales charges under the Contracts.

7. The Company will assess a mortality and expense risk charge at an annual rate of 1.25% of the daily net value of the Separate Account. Of this amount, .80% represents mortality risks and .45% represents expense risks.

The mortality risks the Company assumes arise from (1) the guarantee to make monthly payments for the lifetime of the annuitant regardless of how long the annuitant may live; and (2) the guaranteed minimum death benefit risk assumed by the Company in connection with its promise to return, upon the death of the annuitant, the greatest of the Contract value as of the most recent five-year anniversary of the Contract, total purchase payments, or the Contract value at the time of death. The expense risk the Company assumes is the guarantee that the Administration Charge will never be increased regardless of the actual expense incurred by the Company.

#### Applicants' Legal Analysis

1. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act require that all payments received under a periodic payment plan certificate be held by a qualified trustee or a custodian under a trust indenture, and prohibit any payment to the depositor of or a principal underwriter for a registered unit investment trust except a fee, not exceeding such reasonable amounts as the Commission may prescribe, for performing bookkeeping and other administrative services.

2. Applicants request an order under Section 6(c) exempting them from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent necessary to issue Contracts subject to the proposed mortality and expense risk charge.

3. The Company represents that the level of the mortality and expense risk charge is within the range of industry practice for comparable annuity products and is reasonable in relation to the risks assumed under the Contracts. The Company bases this representation on its analysis of publicly available information regarding other insurance companies of similar size and risk ratings offering similar products. Applicants represent that the Company will maintain a memorandum, available to the Commission, setting forth in

detail the products analyzed in the course of, and the methodology and results of, its comparative survey. The Company also maintains, and will make available to the Commission upon request, a supporting actuarial memorandum demonstrating the reasonableness of the mortality and expense risk charge.

4. If the mortality and expense risk charge is insufficient to cover the actual cost of the mortality and expense risk, the loss will be borne by the Company. If the mortality and expense risk charge proves more than sufficient, the excess will be a profit to the Company, and will become a part of the Company's general account surplus.

5. The Company advances sales commissions from its surplus and intends to recover sales expenses through the long-term profitability, if any, derived from the mortality and expense risk charge. If long-term profitability does not materialize, the Company will bear the shortfall in its general account. The Company represents that there exists a reasonable likelihood that this distribution financing arrangement will benefit the separate Account and the Contract owners. Applicants also represent that the basis of this conclusion is set forth in a memorandum maintained on file by the Company which will be made available to the Commission upon its request.

6. The Applicants represent that investments of the Separate Account will be made only in investment companies that, if they adopt any distribution financing plan under Rule 12b-1 under the 1940 Act, will have boards of trustees or directors, the majority of which will not be interested persons as defined in the 1940 Act. Applicants further represent that such boards of directors or trustees must formulate and approve any such distribution plan.

#### Conclusion

Applicants assert that based on the reasons and the facts set forth above, their requested exemptions from Sections 26(c)(2)(C) and 27(c)(2) of the 1940 Act to deduct the mortality and expense risk charge from the assets of the Separate Account under the Contracts are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret M. McFarland,**

*Deputy Secretary.*

[FR Doc. 95-2428 Filed 1-31-95; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-20864; 812-9168]

#### Heritage Cash Trust, et al.; Notice of Application

January 26, 1995.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

**APPLICANTS:** Heritage Cash Trust ("HCT"), Heritage Capital Appreciation Trust ("HCAT"), Heritage Income-Growth Trust ("HIGT"), Heritage Income Trust ("HIT"), Heritage Series Trust ("HST"), Heritage Asset Management, Inc. (the "Adviser"), and Raymond James & Associates, Inc. (the "Distributor"), and any other open-end management investment companies created in the future, for which the Adviser, or any person directly or indirectly controlling, controlled by, or under common control with the Adviser, serves as investment adviser, and/or for which the Distributor, or any person controlled by or under common control with the Distributor, serves as principal underwriter (collectively, the "Funds").

**RELEVANT ACT SECTIONS:** Order requested pursuant to section 6(c) granting an exemption from sections 2(a)(32), 2(a)(35), 18(f)(1), 18(g), 18(i), 22(c), and 22(d) of the Act, and rule 22c-1 thereunder.

**SUMMARY OF APPLICATION:** Applicants seek an order to permit certain open-end management investment companies to issue and sell multiple classes of shares representing interests in the same portfolios of securities, assess a contingent deferred sales charge ("CDSC") on certain redemptions, defer, and waive the CDSC in certain instances.

**FILING DATES:** The application was filed on August 15, 1994 and amended on November 29, 1994, December 19, 1994 and January 25, 1995.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be

received by the SEC by 5:30 p.m. on February 21, 1995, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of the date of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 880 Carillon Parkway, St. Petersburg, Florida 33176.

**FOR FURTHER INFORMATION CONTACT:** Marianne H. Khawley, Staff Attorney, at (202) 942-0562, or C. David Messman, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

#### Applicants' Representations

1. HCT, HCAT, HIGT, HIT, and HST are Massachusetts business trusts registered under the Act as open-end diversified management investment companies. HCAT and HIGT each have a single investment portfolio. HCT currently offers shares in two investment portfolios: the Money Market Fund and the Municipal Money Market Fund. HIT currently offers shares of three investment portfolios: the Diversified Portfolio, the Institutional Government Portfolio, and the Limited Maturity Government Portfolio. HST currently offers shares in three investment portfolios: Small Cap Stock Fund, Value Equity Fund, and Eagle International Equity Portfolio.

2. The Adviser, a wholly-owned subsidiary of Raymond James Financial, Inc. ("RJF"), serves as investment adviser for each Fund, except HST-Eagle International Equity Portfolio. Eagle Asset Management, Inc., also a wholly-owned subsidiary of RJF, serves as investment adviser for HST-Eagle International Equity Portfolio and as subadviser for HCAT, HIGT, HIT-Diversified Portfolio, and HST-Value Equity Fund. Two separate divisions of the Distributor, the Research Division and Awad & Associates, serve as subadvisers to HST-Small Cap Stock Fund. Martin Currie Inc. serves as subadviser to HST-Eagle International Equity Portfolio. The Adviser serves as fund accountant and transfer agent for each Fund. State Street Bank and Trust

Company serves as custodian for the Funds. The Distributor serves as the principal underwriter.

3. Each Fund pays advisory and administration fees to the Adviser at annualized rates ranging from .50% to 1.00% of average daily net assets. Each Fund also pays transfer agency fees and fund accounting fees. The fees of the subadvisers are paid by the Adviser. Shares of the Funds are available for sale to the public through the Distributor or participating dealers and participating banks that have entered into agreements with the Distributor to sell shares. Shares also may be acquired through the Adviser in its capacity as transfer agent. Shares of each Fund, except HCT, HIT-Institutional Government Portfolio, HIT-Limited Maturity Government Portfolio, and HST-Eagle International Equity Portfolio, are presently offered with a front-end sales charge ranging from 2.00% to 4.75%. HCT, HIT-Institutional Government Portfolio, and HST-Eagle International Equity Portfolio do not charge a front-end or deferred sales charge. HIT-Limited Maturity Government Portfolio currently waives its front-end sales charge. The Distributor retains the sales charges imposed on sales of shares and re-allocates all or a portion of such charges to certain dealers and banks that effect such sales. Based on distributor plans adopted pursuant to rule 12b-1 under the Act (the "12b-1 plan(s)"), the Funds pay the Distributor fees at annualized rates ranging from .15% to 1.00% of average daily net assets.

4. The net asset value of each fund share, other than the shares of HCT, is computed by dividing the value of the Fund's assets, less its liabilities, by the number of the Fund's shares outstanding. The net asset value of each share of HCT-Money Market Fund and HCT-Municipal Money Market Fund is calculated in accordance with the amortized cost method which is designed to enable these Funds to maintain a constant \$1.00 per share net asset value.

5. Applicants request an order pursuant to section 6(c) exempting the Funds and each of their investment portfolios from the provisions of sections 2(a)(32), 2(a)(35), 18(f)(1), 18(g), 18(i), 22(c), and 22(d) of the Act, and rule 22c-1 thereunder, to the extent necessary to: (a) Create, issue, and sell multiple classes of securities for the purpose of establishing a multiple class system ("multi-class system"); and (b) permit the imposition of a CDSC on the redemption of certain shares purchased at net asset value and to waive or reduce

the CDSC with respect to certain redemptions.

6. The Funds currently propose to offer three classes of shares. Class A shares will be subject to a front-end sales charge, if any, and a rule 12b-1 fee at a rate of approximately .25% per annum of the average daily net asset value of such shares. Class A shares of a Fund, such as Class A shares of HCT-Money Market Fund, HCT-Municipal Money Market Fund, and HIT-Institutional Government Portfolio, may be offered without a front-end sales charge. In addition, the Adviser may choose to waive the front-end sales charge for Class A shares of a Fund, such as the waiver in effect for the HIT-Limited Maturity Government Portfolio.

7. Class C shares will be subject to a CDSC, if any, ranging from .75% to 1.00% of the aggregate purchase payments made by an investor for such shares of a Fund, and a rule 12b-1 fee ranging from, depending on the Fund, approximately .60% to 1.00% per annum of the average daily net asset value of the shares. The 12b-1 fee of the Class C shares will consist of a combination of up to a .75% distribution fee and up to a .25% service fee.

8. Class D shares will not be subject to a sales charge, will have a low 12b-1 fee, if any, and will be offered only to institutional investors. Existing shares of the Funds generally will be classified as Class A shares. If such shares are held by investors eligible to purchase Class D shares, however, the shares may be classified as Class D shares.

9. Although there is no current intention to do so, applicants may in the future establish such other classes of shares as applicants deem in the best interest of each Fund and its shareholders. All classes of shares issued by the funds in connection with any order granted in response to this application will be issued on a basis identical in all material respects to the classes described and will comply with all conditions set forth below. These classes might be offered: (a) in connection with a 12b-1 plan or plans; (b) in connection with a non-rule 12b-1 shareholder services plan or plans (the "shareholder services plan(s)"); (c) in connection with the allocation of certain expenses that are directly attributable only to certain classes ("class expenses"); (d) without any 12b-1 plan or shareholder services plan; (e) subject to the imposition of varying front-end sales charges; and/or (f) subject to the imposition of varying CDSCs.

10. With respect to each new class, each Fund may enter into one or more 12b-1 plan agreements and/or

shareholder services plan agreements with the Distributor and/or other groups, organizations, or institutions concerning the provision of certain services to shareholders of a particular class. The provision of distribution services and shareholder servicing under the plans will complement (and not duplicate) the services to be provided to each Fund by its manager, investment adviser(s), and/or distributor, and by the parties that provide custody, transfer agency, and administrative services to each Fund. In all cases, the Funds shall comply with article III, section 26 of the National Association of Securities Dealers' ("NASD") Rules of Fair Practice as it relates to the maximum amount of asset-based sales charges that may be imposed by an investment company.

11. The expenses of the Funds that cannot be attributed directly to any one Fund ("trust expenses") generally will be allocated to each Fund based on the relative net assets of those Funds.<sup>1</sup> Trust expenses could include, for example, trustees' fees and expenses, unallocated audit and legal fees, certain insurance premiums, expenses relating to shareholder reports and meetings, and printing expenses not attributable to a single Fund or class.

12. Certain expenses may be attributable to a particular Fund, but not a particular class ("Fund expenses"). All such Fund expenses incurred by a Fund will be allocated to each class of its shares based upon the relative net assets of the class, at the beginning of the day, as determined daily. Fund expenses could include, for example, advisory fees, accounting fees, custodian fees, and fees related to the preparation of separate documents of a particular Fund, such as an annual report for such Fund.

13. Class expenses will be charged directly to the net assets of the particular class and thus will be borne on a pro rata basis by the outstanding shares of such class. All allocations of class expenses will be limited to the extent necessary to preserve a Fund's qualification as a regulated investment company pursuant to the Internal Revenue Code of 1986, as amended.

14. Shares of one or more classes ("Purchase Class shares") may automatically convert to another class ("Target Class shares") after a prescribed period of time. Target Class shares thereafter would be subject to lower 12b-1 plan payments, if any, than

Purchase Class shares. Purchase Class shares are currently expected to convert to Target Class shares following the expiration of approximately six years from the purchase date. Target Class shares in all cases will be subject to lower aggregate 12b-1 plan payments, if any, and ongoing class expenses, than Purchase Class shares. The conversion will be on the basis of the relative net asset values of the two classes, without the imposition of any sales or other charge except that any asset-based sales or other charge applicable to the Target Class shares would thereafter be applied to such converted shares. Purchase Class shares in a shareholder's Fund account that were purchased through the reinvestment of dividends and other distributions paid in respect of Purchase Class shares will be considered to be held in a separate sub-account. Each time any Purchase Class shares in a shareholder's Fund account convert to Target Class shares, a pro rata share of the Purchase Class shares then in the sub-account also will convert to Target Class shares. The conversion would be subject to the availability of any opinion by counsel or an Internal Revenue Service private letter ruling to the effect that the conversion does not constitute a taxable event under federal income tax law.

15. Applicants request relief to permit each Fund to waive, defer, or reduce the CDSC in certain circumstances. Any waiver, deferral, or reduction will comply with the conditions in paragraphs (a) through (d) of rule 22d-1 under the Act.

16. The CDSC will not be imposed on redemptions of shares which were purchased more than six years prior to the redemptions (the "CDSC period") or on those shares derived from the reinvestment of dividends and/or distributions. No CDSC will be imposed on an amount which represents an increase in the value of a shareholder's account resulting from capital appreciation above the amount paid for shares purchased in the CDSC period. The amount of the CDSC will be calculated as the lesser of the amount that represents a specified percentage of the net asset value of the shares at the time of purchase, or the amount that represents such percentage of the net asset value of the shares at the time of redemption.

17. In determining the applicability of any CDSC, it will be assumed that a redemption is made first of shares representing reinvestment of the dividends and capital gain distributions, second of shares held by the shareholder for a period equal to or greater than the CDSC period, and

finally of other shares held by the shareholder for the longest period of time. This will result in a charge, if any, imposed at the lowest possible rate.

18. No CDSC will be imposed on any shares issued by the Funds prior to the date of any order granting the exemptive relief requested.

19. Applicants also request the ability to provide a pro rata credit for any CDSC paid in connection with a redemption of shares followed by a reinvestment effected within a specified period not exceeding 365 days of redemption. Such credit will be paid by the Distributor rather than the Fund.

20. The shares in different classes within a Fund will also have different exchange privileges. Shares may be exchanged at net asset value for shares of the corresponding class of other Funds. Applicants anticipate that shares of each class of a Fund will be exchangeable for the corresponding class of one or more other Funds. The Adviser retains the right to disallow exchanges of existing and future classes into HCT. All exchange privileges will comply with rule 11a-3 under the Act.

#### **Applicants' Legal Analysis**

1. Applicants request an order pursuant to section 6(c) providing an exemption from the Act to the extent that the proposed creation, issuance, and sale of new classes of shares representing interests in the existing and future Funds, including the allocation of voting rights thereto and the payment of dividends thereon, might be deemed: (a) to result in a "senior security" within the meaning of section 18(g) of the Act and to be prohibited by section 18(f)(1) of the Act; and (b) to violate the requirement of section 18(i) of the Act that every share of stock issued by a registered management investment company shall have equal voting rights with every other outstanding voting stock.

2. Applicants believe the proposed allocation of expenses and voting rights in the manner described is equitable and would not discriminate against any group of shareholders. Although investors purchasing shares offered in connection with a 12b-1 plan and/or bearing particular class expenses would bear the costs associated with the related services, they also would enjoy the benefits of those services and the exclusive shareholder voting rights with respect to matters affecting the applicable 12b-1 plan. Conversely, investors purchasing shares that are not covered by a plan or not bearing class expenses would not be burdened with such expenses or enjoy such voting rights.

<sup>1</sup> From time to time, a Fund may allocate expenses among its series using an alternative method, including allocation based on the number of shareholders of each series or the number of series in such Fund, as may be appropriate.

3. Applicants assert that because the rights and privileges of shares would be substantially identical, the possibility that their interests would ever conflict is remote. The interests of each class of shareholders would be protected adequately because the 12b-1 plans and the payments thereunder will conform to the requirements of rule 12b-1, including the requirement that the 12b-1 plans be approved by the boards of trustees (the "trustees") of the respective Funds, including the independent trustees.

4. Applicants believe that the creation, issuance, and sale of new classes of shares by the Funds may assist the Funds in meeting the competitive demands of today's financial services industry. The proposed arrangement would permit the Funds to both facilitate the distribution of their securities and provide investors with a broader choice as to the method of purchasing shares without assuming excessive accounting and bookkeeping costs or unnecessary investment risks. Under the proposed arrangement, investors will be able to choose the method of purchasing shares that is most beneficial given the amount of their purchase and the length of time the investor expects to hold his shares. The proposed arrangement does not involve borrowed money and does not affect the Funds' existing assets or reserves. The proposed arrangement will not increase the speculative character of the new classes of shares in a Fund because all shares will participate in all of the Fund's appreciation, income, and expenses.

5. Applicants also are requesting an exemption from the provisions of sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the Act, and rule 22c-1 thereunder, to the extent necessary to allow the Funds the ability to assess a CDSC on certain classes of shares and any future classes of shares which may impose a CDSC, and to waive or reduce the CDSC with respect to certain types of redemptions. Applicants believe that the imposition of a CDSC on certain classes of shares is fair and in the best interests of their shareholders. The proposed sales structure permits Fund shareholders to have the advantage of greater investment dollars working for them from the time of their purchase of CDSC class shares than if a sales charge were imposed at the time of purchase.

#### **Applicants' Conditions**

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

1. Each class of shares of a Fund will represent interests in the same portfolio

of investments, and be identical in all respects, except as set forth below. The only differences between the classes of shares of a Fund will relate solely to one or more of the following: (a) Expenses assessed to a class pursuant to a 12b-1 plan or shareholder services plan, if any, with respect to such class; (b) the impact of class expenses, which are limited to any or all of the following: (i) Transfer agent fees identified as being attributable to a specific class of shares, (ii) stationary, printing, postage, and delivery expenses related to preparing and distributing materials such as shareholder reports, prospectuses, statements of additional information, and proxy statements to current shareholders of a specific class, (iii) Blue Sky registration fees incurred by a class of shares, (iv) SEC registration fees incurred by a class of shares, (v) expenses of administrative personnel and services as required to support the shareholders of a specific class, (vi) trustees' fees or expenses incurred as a result of issues relating to one class of shares, (vii) accounting expenses relating solely to one class of shares, (viii) auditors' fees, litigation expenses, legal fees, and expenses relating to a class of shares, and (ix) expenses incurred in connection with shareholders' meetings as a result of issues relating to one class of shares; (c) the fact that the classes will vote separately with respect to matters relating to a Fund's 12b-1 plan applicable to each class, if any, except as provided in condition 15; (d) the different exchange privileges of the classes of shares, if any; (e) certain classes may have a conversion feature; and (f) the designation of each class of shares of a Fund. Any additional incremental expenses not specifically identified which are subsequently identified and determined to be properly allocated to one class of shares shall not be so applied unless and until approved by the SEC.

2. The trustees, including a majority of the independent trustees, will have approved the multi-class system, with respect to a particular Fund prior to the implementation of the system by that Fund. The minutes of the meetings of the trustees regarding the deliberations of the trustees with respect to the approvals necessary to implement the multi-class system will reflect in detail the reasons for the trustees' determination that the proposed multi-class system is in the best interests of each Fund and its shareholders.

3. The initial determination of the class expenses that will be allocated to a particular class and any subsequent changes thereto will be reviewed and

approved by a vote of the trustees, including a majority of the independent trustees. Any person authorized to direct the allocation and disposition of monies paid or payable by a Fund to meet class expenses shall provide to the trustees, and the trustees shall review, at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made.

4. If any class will be subject to a shareholder services plan, the plan will be adopted and operated in accordance with the procedures set forth in rule 12b-1(b) through (f) as if the expenditures made thereunder were subject to rule 12b-1, except that shareholders need not enjoy the voting rights specified in rule 12b-1.

5. On an ongoing basis, each Fund's board of trustees, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor that Fund, for the existence of any material conflicts among the interests of the classes of its shares. The trustees, including a majority of the independent trustees, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The Adviser and the Distributor will be responsible for reporting any potential or existing conflicts to the trustees. If a conflict arises, the Adviser and the Distributor, at their own expense will take such actions as are necessary to remedy such conflict including establishing a new registered management investment company, if necessary.

6. The trustees will receive quarterly and annual statements concerning distribution and shareholder servicing expenditures in compliance with paragraph (b)(3)(ii) of rule 12b-1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale or servicing of a particular class of shares will be used to justify any fees charged to that class. Expenditures not related to the sale or servicing of a particular class of shares will not be presented to the trustees to justify any fees charged to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent trustees in the exercise of their fiduciary duties.

7. Dividends and other distributions paid by a Fund with respect to each class of its shares, to the extent any dividends or other distributions are paid, will be declared and paid on the same day and at the same time, and will be determined in the same manner and will be in the same amount, except that the amount of the dividends and other

distributions declared and paid by a particular class may be different from that of another class because plan payments made by a class pursuant to a 12b-1 plan or shareholder services plan and other class expenses will be borne exclusively by that class.

8. The methodology and procedures for calculating the net asset value and dividends and other distributions of the classes and the proper allocation of expenses among the classes have been reviewed by an Expert (the "Expert"), who has rendered a report to the trustees of the Funds, which has been provided to the staff of the SEC, stating that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made, and based upon such review, will render at least annually a report to the Funds that the calculations and allocations are being made properly. The reports of the Expert shall be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Expert with respect to such reports, following request by the Funds which the Funds agree to make, will be available for inspection by the SEC staff upon the written request to a Fund for such work papers by a senior member of the SEC's Division of Investment Management or of a Regional Office of the SEC, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Expert is a "Special Purpose" report on "policies and procedures placed in operation" in accordance with Statements on Auditing Standards ("SAS") No. 70, "Reports on the Processing of Transactions by Service Organizations," of the American Institute of Certified Public Accountants ("AICPA"). Ongoing reports will be reports on "policies and procedures placed in operation and tests of operating effectiveness" prepared in accordance with SAS No. 70 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

9. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and other distributions of the classes of shares and the proper

allocation of income and expenses among the classes of shares and this representation has been concurred with by the Expert in the initial report referred to in condition 8 above and has been concurred with by the Expert, or appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in condition 8 above. Applicants will take immediate corrective measures if the Expert, or appropriate substitute Expert, does not so concur in the ongoing reports.

10. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the trustees with respect to the multi-class system will be set forth in the guidelines that will be furnished to the trustees.

11. Each Fund will disclose the respective expenses, performance data, distribution arrangement, services, fees, sales loads, CDSCs, and exchange privileges applicable to each class of shares in every prospectus, regardless of whether all classes of shares are offered through each prospectus. Each Fund will disclose the respective expenses and performance data applicable to all classes of shares in every shareholder report. The shareholder reports will contain, in the statement of assets and liabilities and statements of operations, information related to the Fund as a whole generally and not on a per class basis. Each Fund's per share data, however, will be prepared on a per class basis with respect to all classes of shares of such Fund. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of shares, it will disclose the expense or performance data applicable to all classes of shares. The information provided by applicants for publication in any newspaper or similar listing of a Fund's net asset value or public offering price will present each class of shares separately.

12. The prospectus of each Fund will include a statement to the effect that a salesperson and any other person entitled to receive compensation for selling or servicing shares of a Fund may receive different levels of compensation with respect to one particular class of shares over another in a Fund.

13. Applicants acknowledge that the grant of the exemptive order requested by this application will not imply SEC approval, authorization, or acquiescence in any particular level of payments that a Fund may make pursuant to its 12b-1 plan or shareholder services plan in reliance on the exemptive order.

14. Any class of shares with a conversion feature will convert into

another class of shares on the basis of the relative net asset values of the two classes, without the imposition of any sales load, fee, or other charge. After conversion, the converted shares will be subject to an asset-based sales charge (as the term is defined in Article III, Section 26 of the NASA's Rules of Fair Practice), if any, that in the aggregate is lower than the asset-based sales charge and service fee to which they were subject prior to the conversion.

15. If a Fund implements any amendment to a 12b-1 plan (or, if presented to shareholders, adopts or implements any amendment to a shareholder services plan) that would increase materially the amount that may be borne by the Target Class shares under the plan, then existing Purchase Class shares will stop converting into the Target Class shares unless the holders of a majority of Purchase Class shares, voting separately as a class, approve the amendment. The trustees shall take such action as is necessary to ensure that existing Purchase class shares are exchanged or converted into a new class of shares ("New Target Class shares"), identical in all material respects to Target Class shares as they existed prior to implementation of the amendment, no later than the date such shares previously were scheduled to convert into Target Class shares. If deemed advisable by the trustees to implement the foregoing, such action may include the exchange of all existing Purchase Class shares for a new class of shares ("New Purchase Class shares"), identical to existing Purchase Class shares in all material respects except that the New Purchase Class shares will convert into New Target Class shares. The New Target Class shares and New Purchase Class shares may be formed without further exemptive relief. Exchanges or conversions described in this condition shall be effected in a manner that the trustees reasonably believe will not be subject to federal taxation. In accordance with condition 5, any additional cost associated with the creation, exchange, or conversion of the New Target Class shares or New Purchase Class shares will be borne solely by the Adviser and/or the Distributor. Purchase Class shares sold after the implementation of this proposed arrangement may convert into Target Class shares subject to the higher maximum payment, provided that the material features of the target Class plan and the relationship of such plan to the Purchase class shares are disclosed in an effective registration statement.

16. The Distributor will adopt compliance standards as to when each class of shares may appropriately be

sold to particular investors. Applicants will require all persons selling shares of the Funds to agree to conform to such standards.

17. Applicants will comply with the provisions of proposed rule 6c-10 under the Act, Investment Company Act Release No. 16619 (Nov. 2, 1988), as such rule is currently proposed, or if it is repropounded or adopted, as it may be repropounded, adopted, or amended.

For the SEC, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95-2429 Filed 1-31-95; 8:45 am]

BILLING CODE 8010-01-M

## SMALL BUSINESS ADMINISTRATION

### Rural America Fund, Inc.; Notice of Surrender of License

[License No. 03/03-0194]

Notice is hereby given that Rural America Fund, Inc. (RAF), Woodland Park, 2201 Cooperative Way, Herndon, Virginia 22071 has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958. RAF was licensed by the Small Business Administration on April 30, 1991.

Under authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender of the license was accepted on January 9, 1995, and accordingly, all rights, privileges, and franchises, derived therefrom, have been terminated.

(Catalog of Federal Domestic Assistant Program No. 59.011. Small Business Investment Companies)

Dated: January 25, 1995.

**Robert D. Sillman,**

*Associate Administrator for Investment.*

[FR Doc. 95-2408 Filed 1-31-95; 8:45 am]

BILLING CODE 8025-01-M

### Gateway Partners, L.P.; Notice of Issuance of a Small Business Investment Company License

[License No. 07/77-0097]

On November 18, 1994, a notice was published in the **Federal Register** (59 FR 59814) stating that an application had been filed by Gateway Venture, L.P., 8000 Maryland Avenue, Suite 1190, St. Louis, Missouri 63105, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1994)) for a license to operate as a small business investment company.

Interested parties were given until close of business December 3, 1994 to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, including a request for a name change which was granted, SBA issued License No. 07/77-0097 on January 23, 1995, to Gateway Partners, L.P. to operate as a small business investment company.

The Licensee has initial private capital of \$7.5 million, and Mr. John S. McCarthy will manage the fund. Mr. McCarthy and two other individual General Partners will own approximately 16% of the partnership interests of the Licensee; the Danforth Foundation, a limited partner investor, will own approximately 13.5% of the license. The balance of the partnership will be owned by 33 individuals, trusts, pensions and corporations, none of whom will own more than 10%.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: January 25, 1995.

**Robert D. Stillman,**

*Associate Administrator for Investment.*

[FR Doc. 95-2409 Filed 1-31-95; 8:45 am]

BILLING CODE 8025-01-M

## DEPARTMENT OF STATE

[Public Notice 2156]

### United States International Telecommunications Advisory Committee Radiocommunication Sector Study Group 4; Meeting

The Department of State announces that the United States International Telecommunications Advisory Committee (ITAC), Radiocommunication Sector Study Group 4, will meet on February 28, 1995, from 1:30 to 5:00 PM, in Room 1207 at the U.S. Department of State, 2201 C Street, N.W. Washington, D.C. 20520.

Study Group 4 deals with matters relating to the fixed satellite service. The purpose of the meeting is (1) review Working Party and Task Group work, (2) organize preparations for the international meeting of Study Group 4 in May 1995, (3) report on activities related to international satellite coordination related to Resolution Com 4/10 from Kyoto and (4) any other matters within the competence of this Study Group.

Members of the General Public may attend the meetings and join in the discussion, subject to the instructions of the Chairman, Dr. Robert Hedinger, (908) 234-7550. Those persons who wish to attend please call (202) 647-0201—(Fax 202) 647-7407 and leave name, social security number and date of birth not later than 5 days before the meeting. Enter from the "C" Street Main Lobby. A picture ID will be required for admittance.

Dated: January 20, 1995.

**Warren G. Richards,**

*Chairman, U.S. ITAC for ITU—Radiocommunication Sector.*

[FR Doc. 95-2475 Filed 1-31-95; 8:45 am]

BILLING CODE 4710-45-M

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

[Docket No. 49973]

### Order on Discussion Authority Regarding a Smoking Ban on Transatlantic Flights

January 24, 1995.

**SUMMARY:** We are publishing the entire order as an appendix to this document.

**EFFECTIVE DATE:** January 30, 1995.

### FOR FURTHER INFORMATION CONTACT:

Peter Bloch, U.S. Department of Transportation. Office of the Assistant General Counsel for International Law, Room 10105, 400 Seventh Street, S.W., Washington, D.C. 20590. (202) 366-9183.

**Patrick V. Murphy,**

*Acting Assistant Secretary for Aviation and International Affairs.*

### Order

On December 15, 1994, a joint application was filed by American Airlines, British Airways, Continental Airlines, KLM Royal Dutch Airlines, Northwest Airlines, Trans World Airlines, United Air Lines, and USAir (Joint Applicants) requesting approval of, and antitrust immunity for, discussions to be held for the purpose of reaching a voluntary agreement to ban all smoking on commercial transatlantic flights. They propose to announce a date and place for such discussions and to invite representatives of all interested U.S. and foreign air carriers and international airport and civic groups to participate.

In support of their application, the Joint Applicants state that such a grant is consistent with the public interest because eliminating the exposure of passengers and crew to passive smoke would serve the public health. They cite